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11 UNITED STATES DISTRICT COURT
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13 NORTHERN DISTRICT OF CALIFORNIA
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15 SAN FRANCISCO DIVISION

16 UNITED STATES OF AMERICA) CASE NO. CR 18-00310 EMC
17 v.)
18 LARRY J. GERRANS,) DEFENDANT'S RESPONSE TO
19 Defendant.) GOVERNMENT REQUEST FOR INQUIRY
20) INTO THE AUTHENTICITY OF EXHIBIT 1 TO
21) THE OCTOBER 26, 2020 DECLARATION OF
22) SHAWN HALBERT (DKT 303-1)
23)
24) Date: November 4, 2020
25) Time: 9:30 a.m.
26) Court: Honorable Edward M. Chen
27)
28)

19 INTRODUCTION

20 The government requests a judicial inquiry into Docket 301-1, Dr Ernst's Addendum to his
21 Forensic Psychological Evaluation. Dkt No. 313. The mystery is easily solved. The defense gave the
22 final signed and dated Addendum to U.S. Probation and the government a month ago, but accidentally
23 filed Dr. Ernst's **draft** Addendum with the final sentencing memorandum. Being alerted to the filing
24 mistake by the government's sentencing response, the defense did not think it was appropriate to
25 formally withdraw the draft Addendum because it assumed the government and Court would want to
26 review both. The final Addendum is substantially more detailed than the draft but is not inconsistent.

DISCUSSION

After Judge Kim issued her order denying Mr. Gerrans' motion to reopen bail proceedings on July 22, 2020, the defense asked Dr. Ernst to reply to the points raised in the order. Dr. Ernst was on vacation for most of August and produced a draft response in September. Dr. Ernst produced a more detailed Addendum, which was signed and dated, to the defense on September 22, 2020, and the defense provided it to U.S. Probation and the government the same day it was received.

On October 26, 2020, undersigned counsel accidentally filed the draft of Dr. Ernst's Addendum as Docket 301-1. The government filed its response to defendant's sentencing memorandum, Dkt No. 306, and pointed out that the defense had produced a different (signed and dated) Addendum to Dr. Ernst's Report to the government and U.S. Probation on September 22, 2020, which was the same day that the Addendum was completed. The defense considered withdrawing Dkt No. 301-1 but thought that although erroneously-filed, it should remain in the record in the event that the government and Court wished to compare the two. The defense did not consider that the Court would think that the defense was trying to pass off an undated and unsigned report as the "real" Addendum when counsel had given the signed and dated report to the parties more than a month earlier.

The defense sincerely apologizes for the mistake and any ensuing confusion.¹

CONCLUSION

The government suggests that defense counsel, by sleight of hand and in a clumsy attempt to commit perjury, filed an unsigned, undated report after giving a signed and dated report to the government and U.S. Probation a month earlier. While defense counsel’s apology is certainly appropriate, a “judicial inquiry” is not.

Dated: November 2, 2020

Respectfully submitted,

/s/

SHAWN HALBERT
Counsel for Defendant Larry J. Gerrans

¹ As an explanation but not an excuse, defense counsel's paralegal in the Gerrans' case was in an accident on the Bay Bridge on October 12 and was not able to be in the office to assist with the filing on October 26. Defense counsel simply uploaded the draft rather than the final report during the e-filing.